

conference, the Judge will hold a hearing on any issue that remains in dispute. The hearing will be in accordance with subpart E of these rules, except for §§ 2200.73 and 2200.74 which will not apply.

(b) *Agreements.* At the beginning of the hearing, the Judge will enter into the record all agreements reached by the parties as well as defenses raised during the pre-hearing conference. The parties and the Judge then will attempt to resolve or narrow the remaining issues. The Judge will enter into the record any further agreements reached by the parties.

(c) *Evidence.* The Judge will receive oral, physical, or documentary evidence that is not irrelevant, unduly repetitious or unreliable. Testimony will be given under oath or affirmation. The Federal Rules of Evidence do not apply.

(d) *Reporter.* A reporter will be present at the hearing. An official verbatim transcript of the hearing will be prepared and filed with the Judge. Parties may purchase copies of the transcript from the reporter.

(e) *Oral and written argument.* Each party may present oral argument at the close of the hearing. Post-hearing briefs will not be allowed except by order of the Judge.

(f) *Judge's decision.* Where practicable, the Judge will render his or her decision from the bench. In rendering his or her decision from the bench, the Judge shall state the issues in the case and make clear both his or her findings of fact and conclusions of law on the record. The Judge shall reduce his or her order in the matter to writing and transmit it to the parties as soon as practicable, but no later than 45 days after the hearing. All relevant transcript paragraphs and pages shall be excerpted and included in the decision. Alternatively, within 45 days of the hearing, the Judge will issue a written decision. The decision will be in accordance with § 2200.90. If additional time is needed, approval of the Chief is required.

(g) *Filing of Judge's decision with the Executive Secretary.* When the Judge issues a written decision, it shall be filed simultaneously with the Commission and the parties. Once the Judge's order

is transmitted to the Executive Secretary, § 2200.90(b) applies, with the exception of the 21 day period provided for in rule § 2200.90(b)(2).

§ 2200.210 Review of Judge's decision.

Any party may petition for Commission review of the Judge's decision as provided in § 2200.91. After the issuance of the Judge's written decision or order, the parties may pursue the case following the rules in subpart F.

§ 2200.211 Applicability of subparts A through G.

The provisions of subpart D (except for § 2200.57) and §§ 2200.34, 2200.37(d)(5), 2200.38, 2200.71, 2200.73 and 2200.74 will not apply to E-Z Trials. All other rules contained in Subparts A through G of the Commission's rules of procedure will apply when consistent with the rules in this subpart governing E-Z Trials.

PART 2201—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

Sec.

- 2201.1 Purpose and scope.
- 2201.2 Description of agency.
- 2201.3 Delegation of authority.
- 2201.4 General policy.
- 2201.5 Copies of Commission decisions.
- 2201.6 Procedure for requesting records.
- 2201.7 Responses to requests.
- 2201.8 Fees for copying, searching, and review.
- 2201.9 Waiver of fees.
- 2201.10 Maintenance of statistics.

AUTHORITY: 29 U.S.C. 661(g); 5 U.S.C. 552.

SOURCE: 53 FR 17930, May 19, 1988, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 2201 appear at 61 FR 14024, Mar. 29, 1996.

§ 2201.1 Purpose of scope.

This part prescribes procedures to obtain information and records of the Occupational Safety and Health Review Commission under the Freedom of Information Act, 5 U.S.C. 552. It applies only to records or information of the Commission or in the Commission's custody. This part does not affect discovery in adversary proceedings before the Commission. Discovery is governed

by the Commission's Rules of Procedure in 29 CFR part 2200, subpart D.

§ 2201.2 Description of agency.

The Occupational Safety and Health Review Commission (OSHRC or Commission) adjudicates contested enforcement actions under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651–678. The Commission decides cases after the parties are given an opportunity for a hearing. All hearings are open to the public and are conducted at a place convenient to the parties by an Administrative Law Judge. Any Commissioner may direct that a decision of a Judge be reviewed by the full Commission.

§ 2201.3 Delegation of authority.

The Freedom of Information Act Officer is delegated the authority to act upon all requests for public records. In the absence of the Freedom of Information Act Officer, the Chairman or the Executive Director may designate another Commission officer or employee, such as the General Counsel or the Executive Secretary, to respond to requests. Copies of individual Commission decisions may be obtained directly from the Freedom of Information Act Officer at the Commission's national office. See § 2201.5(a). All other information requests shall be directed to the Freedom of Information Act Officer. See § 2201.6(b).

[61 FR 14025, Mar. 29, 1996]

§ 2201.4 General policy.

(a) *Non-exempt records available to public.* Except for records and information exempted from disclosure by 5 U.S.C. 553(b) or published in the Federal Register under 5 U.S.C. 552(a)(1), all records of the Commission or in its custody are available to any person who requests them in accordance with § 2201.6.

(b) *Examination of records in cases appealed to courts.* A final order of the Commission may be appealed to a United States Court of Appeals. When this occurs, the Commission may send part or all of the official case file to the court and may retain other parts of the file. Thus, a document in a case may not be available from the Commission

but only from the court of appeals. In such a case, the Freedom of Information Act Officer may inform the requester that the request for a particular document should be directed to the court.

(c) *Time for examination and copying.* Records may be examined and copied, under conditions prescribed by the Freedom of Information Act Officer, between the hours of 10 a.m. and 3 p.m. on any business day so long as the examination or copying does not interfere with the hearing or disposition of a pending case.

§ 2201.5 Copies of Commission decisions.

(a) *Single decisions.* One copy of a Commission decision or decision by an Administrative Law Judge may be obtained free of copying fees by calling, writing or visiting the Freedom of Information Act Officer at the Commission's national office. A search fee may be charged, however, if the decision is not identified by name and date, or by docket number, or if it is not otherwise easily identifiable. See § 2201.8 (b)(2)(i). Copying fees will be charged if more than one decision is requested and the copying cost exceeds \$10. See § 2201.8 (a)(1) and (b)(1). The address and telephone number of the office at which decisions are available is OSHRC, Freedom of Information Act Officer, One Lafayette Centre, 1120–20th St. NW., room 900, Washington, DC 20036–3419. Telephone 202–606–5398.

(b)(1) *OSAHRC Reports.* All final Commission decisions from 1971 through 1992 (including decisions of the Commission and its Administrative Law Judges) of general applicability, and concurring and dissenting opinions, are published in a series of microfiche entitled OSAHRC Reports. OSAHRC Reports may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Persons wishing to obtain copies of numerous decisions and avoid large copying charges may purchase OSAHRC Reports or subscribe to a private reporting service. Decisions issued after 1992 are available by calling, writing or visiting the national office.

(2) *Citation form.* Decisions in the microfiche series of OSAHRC Reports

are officially cited as follows: The name of the cited employer; the last two digits of the year of the decision; OSAHRC (signifying the name of the official reporter, OSAHRC Reports); the serial number of the fiche on which the decision is printed, followed by a slash mark and the coordinates on the fiche for the first page of the decision. For example, *J.W. Black Lumber Co., 75 OSAHRC 1/B9*.

(3) *Indices*. The Commission indexes decisions in OSAHRC Reports by docket number and alphabetically by name. These indices may be purchased by contacting the Freedom of Information Act Officer.

[53 FR 17930, May 19, 1988, as amended at 58 FR 26066, Apr. 30, 1993; 61 FR 14025, Mar. 29, 1996]

§ 2201.6 Procedure for requesting records.

(a) *Obtaining procedural rules, press releases, hearing dates, etc.* Press releases, rules of procedure, published material other than decisions and their indices, information concerning the date, time and place of hearings, and other information of a general nature concerning operations of the Commission may be obtained free of charge by calling, writing or visiting the Freedom of Information Act Officer. See the address and telephone number in § 2201.5(a).

(b) *Other information*. Persons wishing to obtain copies of documents (including the hearing transcript) filed in a case before the Commission or one of its Judges, or any other information or record of the Commission or in its custody (except for one copy of a decision by the Commission or a Judge, and information that is freely available under paragraph (a) of this section), shall submit a request in writing to the Freedom of Information Act Officer at the address in § 2201.5(a). The request shall be clearly identified as a request for information under the Freedom of Information Act. The envelope or cover enclosing or covering the request shall have the phrase "INFORMATION REQUEST" in capital letters on it.

(c) *Date of receipt*. A request that complies with the preceding paragraph is deemed received when received by the Commission. A request that does not comply with the preceding para-

graph is deemed received when it is actually received by the Freedom of Information Act Officer. If the Freedom of Information Act Officer has required advance payment or satisfactory assurance of full payment under § 2201.8(f), the request will not be deemed received until the Freedom of Information Act Officer has received the payment or assurance.

(d) *Specificity required*. Requesters shall describe the records sought with reasonable specificity.

§ 2201.7 Responses to requests.

(a) *Response within ten working days*. Except in the unusual circumstances stated in 5 U.S.C. 552(a)(6)(B) (concerning search and collection of records in separate offices, voluminous records, and consultation with another agency or another Commission office), the Freedom of Information Act Officer shall respond to a request for records or information submitted in accordance with § 2200.6 within ten working days after receipt of the request.

(b) *Content of denial*. When the Freedom of Information Act Officer denies a request, the notice of the denial shall state the reason for it and that the denial may be appealed as specified below. A refusal by the Freedom of Information Act Officer to process the request because the requester has not made an advance payment or given a satisfactory assurance of full payment required under § 2201.8(f) may be treated as a denial of the request and appealed under paragraph (c) of this section.

(c) *Appeal of denial*. A denial of a request may be appealed in writing to the Chairman of the Commission within 30 working days after the requester receives notice of the denial. The Chairman shall act on the appeal under 5 U.S.C. 552(a)(6)(ii) within 20 working days after the receipt of the appeal. If the Chairman wholly or partially upholds the denial of the request, he shall notify the requesting person that he may obtain judicial review of the Chairman's action under 5 U.S.C. 552(a)(4)(B)-(G).

§ 2201.8 Fees for copying, searching, and review.

(a) *Discretion in charging fees*—(1) *Fees required unless waived.* The Freedom of Information Act Officer shall charge the fees in paragraph (b) of this section unless the fees for a request are less than \$10, in which case no fees shall be charged. The Freedom of Information Act Officer shall, however, waive the fees in the circumstances stated in § 2201.9.

(2) *News media requests deemed not commercial.* Requests made for a commercial use are generally subject to higher fees than requests from a representative of the news media. For the purpose of this section, a request from a representative of the news media that supports the news dissemination function of the requester will not be considered to be for a commercial use.

(3) *Determination of commercial use request.* A commercial use request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. Where the Freedom of Information Act Officer has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Freedom of Information Act Officer may seek clarification from the requester before assigning the request to a specific category for fee assessment purposes.

(b) *Types of fees*—(1) *Copying fee.* The fee per copy of each page up to 8½" × 14" shall be \$.25 per copy per page. Copying fees shall not be charged for the first 100 pages of copies unless the copies are requested for a commercial use. One copy of a Commission or judge's decision will be provided free of charge. See § 2201.5(a).

(2) *Search fee.* The fee for searching for information and records shall be \$19 per hour of clerical time and \$46 per hour of professional time. Fees for searches of computerized records shall be the actual cost to the Commission but shall not exceed \$300 per hour. This fee includes machine time and that of the operator and clerical personnel. The fee for computer printouts shall be \$.40 per page. Commercial requesters

shall be charged for all search time. Time spent on unsuccessful searches shall be fully charged. However, search fees shall be limited or not charged as follows:

(i) *Easily identifiable decisions.* Search fees shall not be charged for searching for decisions that the requester identifies by name and date, or by docket number, or that are otherwise easily identifiable.

(ii) *Educational, scientific or news media requests.* No fee shall be charged if the request is not for a commercial use and is by an educational or scientific institution, whose purpose is scholarly or scientific research, or by a representative of the news media.

(iii) *Other non-commercial requests.* No fee shall be charged for the first two hours of searching if the request is not for a commercial use and is not by an educational or scientific institution, or a representative of the news media.

(iv) *Requests for records about self.* No fee shall be charged to search for records filed in the Commission's systems of records if the requester is the subject of the requested records. See the Privacy Act of 1974, 5 U.S.C. 552a(f)(5) (fees to be charged only for copying).

(3) *Review fee.* A review fee shall be charged only for commercial requests. The review fee shall be charged for the initial examination of documents located in response to a request to determine if it may be withheld from disclosure, and for the excision of withholdable portions, but shall not be charged for review by the Chairman under § 2201.7(c). The review fee is \$20 per hour.

(c) *Aggregation of requests.* When the Freedom of Information Act Officer reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the Freedom of Information Act Officer may aggregate any such requests and charge accordingly.

(d) *Certification or authentication.* The fee for certification or authentication shall be \$3 per document.

(e) *Fees likely to exceed \$25.* If copying or search charges are likely to exceed \$25, the Freedom of Information Act

Officer shall notify the requester of the estimated amount of the charges, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. The notification shall offer the requester an opportunity to confer with the Freedom of Information Act Officer to reformulate the request to meet the requester's needs at a lower cost.

(f) *Advance payments.* Advance payment of fees will generally not be required. If, however, charges are likely to exceed \$250, the Freedom of Information Act Officer shall notify the requester of the likely cost and: if the requester has a history of prompt payment of FOIA charges, obtain satisfactory assurance of full payment; or if the requester has no history of payment, require an advance payment of an amount up to the full estimated charge. If the requester has previously failed to pay a fee within 30 days of the date of billing, the Freedom of Information Act Officer may request the requester to pay the full amount owed plus any interest owed as provided in paragraph (g) of this section or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated charges before the Freedom of Information Act Officer begins to process the new request or a pending request from that requester.

(g) *Interest on unpaid bills.* The Freedom of Information Act Officer shall begin assessing interest charges on unpaid bills starting on the thirty-first day after the date the bill was sent. The accrual of interest will be stayed when the Freedom of Information Act Officer receives a check in payment. Interest will be at the rate described in 31 U.S.C. 3717 and will accrue from the date of billing.

(h) *Debt collection procedures.* If bills are unpaid 60 days after the mailing of a written notice to the requester, the Freedom of Information Act Officer may resort to the debt collection procedures set out in the Debt Collection Act of 1982, Pub. L. 97-365, including disclosure to consumer credit reporting agencies (see 26 U.S.C. 6103) and use of

collection agencies to encourage payment. See 31 U.S.C. 3718 and 3302.

[53 FR 17930, May 19, 1988, as amended at 61 FR 14025, Mar. 29, 1996]

§ 2201.9 Waiver of fees.

(a) *General.* The Freedom of Information Act Officer shall waive part or all of the fees assessed under § 2201.8(b) if two conditions are satisfied: Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and disclosure is not primarily in the commercial interest of the requester. The Freedom of Information Act Officer shall afford the requester the opportunity to show that he comes within these two conditions. The following factors may be considered in determining whether the two conditions are satisfied:

(1) Whether the subject of the requested records concerns the operations or activities of the government;

(2) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(3) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so, whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(b) *Partial waiver of fees.* If the two conditions stated in paragraph (a) of this section are met, the Freedom of Information Act Officer will ordinarily waive all fees. In exceptional cases, however, only a partial waiver may be granted if the request for records would impose an exceptional burden or require an exceptional expenditure of Commission resources, and the request for a waiver minimally satisfies the "public interest" requirement in paragraph (a) of this section.

§ 2201.10 Maintenance of statistics.

(a) The Freedom of Information Act Officer shall maintain records of:

(1) The total amount of fees collected by this agency under this part;

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(2) The number of denials of requests for records or information made under this part and the reason for each;

(3) The number of appeals from such denials, together with the results of such appeals, and the reasons for the action upon each appeal that results in a denial of information or documents;

(4) The name and title or position of each person responsible for each denial of records requested and the number of instances of participation for each;

(5) The results of each proceeding conducted under 5 U.S.C. 552(a)(4)(F), including a report of the disciplinary action against the official or employee primarily responsible for improperly withholding records, or an explanation of why disciplinary action was not taken;

(6) A copy of every rule made by this agency affecting or implementing 5 U.S.C. 552;

(7) A copy of the fee schedule for copies of records and documents requested under this part; and

(8) All other information that indicates efforts to administer fully the letter and spirit of the Freedom of Information Act and the above rules.

(b) The Freedom of Information Act Officer shall annually, within 60 days following the close of each calendar year, prepare a report covering each of the categories of records to be maintained in accordance with the foregoing and submit the same to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress.

PART 2202—RULES OF ETHICS AND CONDUCT OF REVIEW COMMISSION EMPLOYEES

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APPENDIX A TO PART 2202

AUTHORITY: Sec. 12(g), Pub. L. 91-596, (29 U.S.C. 661(f)); E.O. 11222, 3 CFR (Rev. 1974), 18 U.S.C. 201, note; 5 CFR 735.104; 18 U.S.C. 201-209 (1962).

SOURCE: 41 FR 53011, Dec. 3, 1976, unless otherwise noted.

Subpart A—General

§ 2202.1 Purpose and scope.

(a) This part is designed to implement provisions of Executive Order 11222, 3 CFR (Rev. 1974), May 8, 1965, "Prescribing Standards of Ethical Conduct For Government Officials and Employees," and 5 CFR 735.104 *et seq.* It prescribes standards of conduct for employees of the Occupational Safety and Health Review Commission (hereinafter OSHRC or the Commission) relating to conflicts of interest arising out of outside employment, private business and professional activities, and financial interests. It sets forth requirements for the disclosure of such interests by OSHRC employees. In addition,